

REMARKS

Claim 1-19 are pending. Applicant respectfully request reconsideration of claims based on this Amendment.

Claims 1 and 11, the only independent claims, have been amended to replace the "comprising" term with the "consisting essentially of" term. Support for this amendment can be found in Examples 1 and 2. No new matter has been added.

REJECTION OF CLAIMS 1-6 & 11-17 UNDER 35 U.S.C. §102(b)

Claims 1-6 and 11-17 have been rejected under 35 U.S.C. §102(b) as being anticipated by Chen et al., U.S. Patent 5,690,691. Applicant respectfully submit that the amended claims are neither anticipated by, nor rendered obvious, by Chen et al. alone or combined with any of the art of record.

Chen et al. provides, as illustrated in Figure 5, phased, multi-point electrical stimulation of organs in the gastro-intestinal tract. Although Chen et al. is mainly directed to electrostimulation of the major gastro-intestinal tract organs (i.e., stomach, small intestines, and colon) at the same time, they do teach electrostimulation of the individual organs.

However, Chen et al. does not teach or suggest that electrostimulation of the small intestines alone (i.e., without concurrent electrostimulation of the stomach) would have any effect, much less the effect required by the amended claims (i.e., "to prevent or slow down stomach emptying, thereby slowing food transit through the patient's digestive system"), on the stomach. Chen et al. effectively teaches that electrostimulation of a given organ only effects that particular organ. For example, Chen et al. specifically teaches that

"in treating obesity, one might apply retrograde, phase pacing of 3.3 to 12 cpm to electrodes positioned in or on the stomach; thereby overriding the natural peristaltic flow through the stomach. Likewise, in treating small bowel syndrome, one might apply retrograde, phase pacing of 9.9 cpm or more to the bowel." Col. 6, line 66, col. 7, line 4.

Based on Chen et al., treatment of obesity by delaying emptying of the stomach would require electrostimulation to the stomach. Electrostimulation of the bowel would only be suitable for a condition associated with the bowel (e.g., small bowel syndrome (col. 7, lines 2-4); constipation (col. 6, lines 57-58; col. 9, lines 48-50); diarrhea (col. 9, line 52); dumping syndrome (col. 9, lines 52-53); irritable bowel syndrome (col. 9, line 53)). Nowhere is it taught or suggested in Chen et al. that electrostimulation of the bowel will have any effect on the stomach. Indeed, Chen et al. teaches away from such an effect since they effectively teach that electrostimulation of the bowel can only effect or treat conditions associated with the bowel.

As indicated above, independent claims 1 and 11 have been amended to use the “consisting essentially of” phraseology and thus now effectively require that stimulation is to the small intestines only. Moreover, “the electrical stimulation to the small intestines alters the patient’s natural gastric motility to prevent or slow down stomach emptying, thereby slowing food transit through the patient’s digestive system.” Nowhere does Chen et al. teach or suggest such an effect could be achieved by stimulation of the small intestines alone. Chen et al. cannot anticipate the present claims.

Independent claims 1 and 11 are not anticipated by Chen et al. Dependent claims 2-6 and 12-17, which depend on independent claims 1 and 11, respectively, cannot be anticipated by Chen et al. Applicant respectfully requests that this rejection be withdrawn.

REJECTION OF CLAIMS 7-10, 18, & 19 UNDER 35 U.S.C. §103(a)

Claims 1-10, 18, and 19 have been rejected under 35 U.S.C. §103(a) as being obvious over Chen et al., U.S. Patent 5,690,691, in view of Mintchev et al., U.S. Patent 6,449,511. Applicants respectfully submit that the amended claims are not rendered “obvious to one having ordinary skill in the art” in view of Chen et al. alone or combined with Mintchev et al.

As noted above (which comments are included by reference herein), Chen et al. does not teach or suggest that electrostimulation of the small intestines alone (i.e., without concurrent electrostimulation of the stomach) would have any effect,

much less the effect required by the amended claims (i.e., "to prevent or slow down stomach emptying, thereby slowing food transit through the patient's digestive system"), on the stomach. Mintchev et al. does not correct this or other deficiencies noted above with regard to Chen et al. More specifically, Mintchev et al. does not teach or suggest that electrostimulation of the small intestines alone (i.e., without concurrent electrostimulation of the stomach) would have any effect, much less the effect required by the amended claims (i.e., "to prevent or slow down stomach emptying, thereby slowing food transit through the patient's digestive system"), on the stomach.

As indicated above, independent claims 1 and 11 have been amended to use the "consisting essentially of" phraseology and thus now effectively require **that stimulation is to the small intestines only**. Moreover, "the electrical stimulation to the small intestines alters the patient's natural gastric motility to prevent or slow down stomach emptying, thereby slowing food transit through the patient's digestive system." Nowhere does Chen et al. teach or suggest such an effect could be achieved by stimulation of the small intestines alone. Chen et al. cannot anticipate the present claims.

Claims 1-10, 18, and 19 are not rendered obvious over Chen et al. alone or combined with Mintchev et al. Applicant respectfully requests that this rejection be withdrawn


CONCLUSION

Applicant respectfully submit that all rejections and objections have been overcome and that all pending claims are in condition for allowance.

If the Examiner believes that a telephonic or personal interview would be helpful to terminate any issues which may remain in the prosecution of the Application, the Examiner is requested to telephone Applicant's attorney at the telephone number set forth herein below.

The Commissioner is hereby authorized to charge any additional fees which may be required in the Application to Deposit Account No. 06-1135.

Respectfully submitted,
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